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CURRENT TOPICS

Value Payments

GOOD news, appropriate to the season of the year, was announced by Mr. DALTON in the Commons on 10th December. The hitherto indefinite date after the end of the war on which value payments are to be made has become a little less indefinite, and there is also a prospect of something over and above 1939 values being paid. In answer to a question by Mrs. Middleton, the Chancellor said that he proposed that value payments under the War Damage Act should be made in the course of next year. He added that he had so informed the War Damage Commission, and that he had requested it to consider urgently, under s. 11 of the Act, whether there should be an increase in those payments. In answer to further questions, Mr. Dalton said that the Commission was a statutory body, and determined its own procedure. It was for the Commission to decide in what form, if at all, it would receive evidence, and it would make a report in due course. Interest was due to be paid at the current rate of 2½ per cent. The proportion of agreed cases was now 50 per cent., and the process of agreement was proceeding rapidly. Mortgage interest which had to be paid and rent for new properties were matters which might be considered, the Chancellor stated. No doubt he meant that such matters might be considered in deciding what increase should be allowed, as they could not be considered in deciding the quantum of a value payment. The words of the Act "by reason of any circumstances arising since the passing of the War Damage Act" are sufficiently wide to cover any losses, although it may be that they were originally intended merely to meet any inflationary position which might subsequently arise. It may be argued that the loss of the use of the capital involved is covered by the provision of 2½ per cent. interest. Especially in cases of long delay and heavy expenditure on mortgage interest and on interim accommodation, this argument would probably be received with indignation.

Solicitor-Justices

ONE of the many interesting matters dealt with in the evidence given by Sir RUPERT HOWORTH, Secretary of Commissions to the Lord Chancellor, in his evidence before the Royal Commission on Justices of the Peace on 23rd October, 1946 (Minutes of Evidence, 1st and 2nd days, H.M. Stationery Office, price 1s. 6d.), related to solicitor-justices. In the memorandum of evidence which he submitted (Appendix I, p. 22, price 3s.), he referred to the fact that before a solicitor can be appointed by name to a borough Commission of the Peace in England and Wales he is required to give an undertaking that neither he nor any member of his firm will practise as a solicitor before the borough justices or before any justices of the county or any borough in the county. The borough solicitor-justice was then subjected in this respect by the administrative action of the Lord Chancellor to precisely the same disabilities as the appointed county solicitor-justice was by s. 54 of the Solicitors Act, 1932. In the case of an *ex-officio* justice-solicitor as chairman of a county council or a district council or mayor of a non-county borough, he was within s. 54 of the Act, and if he desired that he or his firm should continue to practise before the benches, the Lord Chancellor would, on application, make an order under s. 4 of the Justices of the Peace Act, 1906, excluding him from the exercise of his functions as a justice during his term of office and, in the case of a mayor of a non-county borough, for the year succeeding his mayoralty year, when he was *ex officio* a justice of the borough, but not of the county. If the Lord Chancellor's attention is drawn to the fact that a solicitor is mayor of a county borough, the memorandum stated that the practice is for the Lord Chancellor to require the solicitor-mayor to give the undertaking not to practise or, alternatively, to apply for an exclusion order under s. 4 of the Act of 1906.

Opinion of the Lord Chancellor's Department

THE memorandum of Sir RUPERT HOWORTH goes on to state that it is clearly unsatisfactory that action by the Lord Chancellor in the matter should depend on whether or not he is notified that a solicitor has been elected mayor of the county borough. In the view of the Lord Chancellor's Department the expression "any borough therein" in s. 54 of the Act of 1932 includes both an ordinary county borough and those county boroughs which are counties of a city or counties of a town. A solicitor-mayor of a county of a city or of a town is either within the mischief of that section or not. If he is outside the section there seems no reason why the undertaking (not to practise) should be limited in his case to the county of the city or town, or why he should be treated differently from the solicitor-mayor of an ordinary county borough. The memorandum adds that in cases where a borough solicitor-justice transfers his name to the supplemental list, the Lord Chancellor releases him from the undertaking not to practise (Appendix XII (*e*)), if he applies for such release. But a county solicitor-justice who so transfers his name remains within the prohibition of s. 54 of the Solicitors Act, 1932. It would seem desirable, the memorandum states, that the position of the latter should be assimilated to that of the former in this respect when an opportunity presents itself of amending s. 54. When Sir Rupert gave evidence, Lord EXETER, a member of the Royal Commission, said that he had had a case where a solicitor had been elected mayor, where he practised, and it caused a little bit of trouble at the time. The chairman, LORD DU PARCQ, replied: "That is the difficulty. Of course, if he does not practise in the court, he is likely to be a useful member of the bench." In this connection it is interesting to note that LORD JOWITT in his

evidence on 30th October stated that what he looked for in a magistrate was in the first place good character, integrity and reputation, and secondly reasonable intelligence. As those qualities are required, as well as some knowledge of the law, not altogether useless to a magistrate, for qualification as a solicitor, Lord du Parcq's statement that a solicitor is likely to be a useful member of a bench seems amply justified.

A National Legal Service?

FORECASTING the future is always a fascinating hobby, whether one prophesies Wellsian horrors or Wellsian Utopias. We find it difficult to know whether to classify the forecast given out by Mr. L. C. B. GOWER for the future of the legal profession in the October quarter's issue of the *Modern Law Review* in the former or the latter category. Arguing from the present trend towards departmental tribunals, the exclusion of legal representation before such tribunals and the reforms set out in the Rushcliffe report, Mr. Gower foresees as a long-term reorganisation the creation of a National Legal Service comparable to the National Medical Service. Indeed he says that it can hardly be doubted. We imagine that many who have experience of solicitors' offices, barristers' chambers and the courts will have the hardihood to doubt it. The service, he adumbrates, would work through a Central Advisory Committee, a Central Council and Area Committees, "but there are the strongest reasons for retaining the independence of the legal profession, and the greater the powers of bureaucracy the stronger these reasons become." We agree, but why increase the difficulty of maintaining the independence of the legal profession by bureaucratising it? One practical test of the scheme is the question of costs. Mr. Gower's imagination boggles, and rightly, at the prospect of a vast Government department preparing and taxing bills of costs and, having examined all the alternatives, suggests a system of *per capita* payments, again on the admitted analogy of the National Health Service. There is, of course, not the smallest similarity between legal and medical services. The latter show some degree of uniformity; the former show none. The answer, according to Mr. Gower, is that "what we lose on the swings we shall hope to gain on the roundabouts." If that is so, solicitors will have to combine the optimism of a Micawber with the financial genius of a Skimpole. Disbursements are only one of the factors rendering the scheme impossible. If the mantle of Elijah has fallen upon Mr. Gower we trust that the answer to the question "How long?" will be "Not in our time, O Lord."

Private Development of Agricultural Land

IN Circular No. 28, issued by the Ministry of Town and Country Planning on the 30th November, 1946, it is stated that, in order to ensure that advice on the agricultural aspects of planning is available, the Minister of Agriculture and Fisheries has appointed rural land utilisation officers, who are already consulted on all proposals for the compulsory purchase of agricultural land for housing or for some other non-agricultural development. It is clear, however, that agricultural interests are also likely to be closely affected in the case of applications for consent to private development on farm land. In many areas liaison between the rural land utilisation officers and the local planning officers has already been established and in some areas there are already informal consultations on applications for interim development permission affecting farming interests and working arrangements for agreeing areas where development would be least damaging to agriculture. The Ministers of Town and Country Planning and Agriculture are anxious that this relationship should be extended to cover the whole country and feel sure that this is desirable in the interests of planning. Rural land utilisation officers have been drawing up throughout the country plans demarcating in relation to towns three areas: (i) urban areas where urban development has already taken place and where agricultural interests are not affected; (ii) intermediate areas where non-agricultural development could take place with the least harm to agricultural interests, the extent of the area varying with the requirements of the locality; (iii) rural areas where agricultural and other rural interests are predominant. No consultation would be necessary in the case of applications for interim development permission arising within the urban areas. Normally speaking no consultation would be necessary on applications for interim development arising within the intermediate area, even where agricultural land was affected, but rural land utilisation officers would be very glad to give any advice on such applications where some important agricultural consideration seemed to arise. Rural land utilisation officers should, however, be consulted on all applications for interim development permission arising in the rural area. The Minister of Town and Country Planning accordingly requests that planning authorities should confer with rural land utilisation officers and settle with them the different areas along the lines suggested above. When the rural areas within which consultation should take place have been fixed, the planning authority should inform the rural land utilisation officer of any proposals for development within such areas and give careful consideration to any representations made in regard to agricultural issues arising on such applications.

Recent Decisions

In *Parker* v. *Boggon*, on 9th December (*The Times*, 10th December), MACNAGHTEN, J., held that it was not reasonable to refuse consent to a tenant to sub-let on the ground that the proposed sub-tenant was entitled to diplomatic privilege. His lordship said that to some it might appear an advantage rather than a disadvantage that a tenant was entitled to diplomatic privilege, for such a person would presumably be able to discharge his obligations, and if he personally did not discharge them, his government behind him would feel bound to discharge them.

In *Thorne* v. *Smith*, on 10th December (*The Times*, 11th December), the Court of Appeal (SCOTT, BUCKNILL and SOMERVELL, L.JJ.), held that where a county court made a consent order for possession, the plaintiff having sued for possession of a dwelling-house under the "hardship clause" (para. (*h*) of the First Schedule to the Rent and Mortgage Interest Restrictions Act, 1933) and the tenant vacated the house on 2nd March, 1946, pursuant to the consent order, and the landlord sold it with vacant possession on 9th April, 1946, the county court judge was wrong in refusing damages under s. 5 (6) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The subsection did not presuppose an investigation by the court, and the order of possession was plainly caused by the landlord's misrepresentation, which fell within the subsection.

In *James* v. *Lewis*, on 10th December (*The Times*, 12th December), a Divisional Court (THE LORD CHIEF JUSTICE and HUMPHREYS and LEWIS, L.JJ.), held, where the respondent was a solicitor who was food executive officer for the district and clerk of the magistrates' court which tried his case, that the court should not have dismissed the charge under reg. 82 (2) of the Defence (General) Regulations, 1939, and reg. 55 of those regulations for making a false statement in furnishing information for the purposes of the Livestock (Restrictions on Slaughtering) No. 2 Order, 1940. It was alleged that the respondent had stated in Form A.C.P. (A) in the name of J. G. Angus that a pig would, at the date of the application for a licence to slaughter it, have been in the ownership of J. G. Angus for not less than three calendar months immediately preceding that date. It was also alleged that J. G. Angus was an agricultural labourer in the respondent's employ, and had never owned the pig, which was owned and fed on the respondent's premises. The respondent, it was said, granted the licence on the same day as the application was made, and it was alleged that he slaughtered the pig on the same day on his premises. The appeal was allowed and the case sent back to the justices to be dealt with, the respondent to be allowed an opportunity of giving his evidence, if he desired to do so. The conduct of the respondent would be brought to the notice of The Law Society, and that of the justices to the Lord Chancellor.

DEDUCTION OF TAX UNDER SCHEDULE D AT SOURCE

WHILE it is well known among the public that the Revenue achieves the collection of a large part of the income tax with the aid of the expedient of deduction at source, it is nevertheless certain that a great amount of confusion continues to exist even among the professional public with regard to at least one important manifestation of this expedient—its operation in the case of tax under Sched. D.

Yet there are possibly few matters in all law which are to be found so painstakingly expounded by learned judges in reported cases. That this should be so in the case of a subject which is essentially one of statute law, and not of judge-made law in the ordinary sense, is no less remarkable than it is a reflection upon the perspicuity of the Legislature.

It is proposed here, with the indispensable assistance of some judicial expositions of the subject, to emphasise its main principles. But first for a perspective.

Deduction of tax at source may arise in respect of income assessable under Scheds. A, C, D or E. If it would be an abuse of language to describe any tax matter as simple, at least some points are more straightforward than others, and it will normally be sufficient for the reader to refer respectively to No. VIII of Sched. A in the Income Tax Act, 1918, and to the various sets of rules of Sched. C in the same Act for the conditions of deduction of tax under those schedules. Both these codes of deduction have become largely matters of commercial routine. "Landlord's property tax only excepted" runs the hallowed lease-precedent; the deduction of tax from the income of investments in public funds is equally familiar. As for Sched. E, the P.A.Y.E. system has forced itself under the notice of the busiest man-of-affairs. It is with deduction of Sched. D tax that almost all the difficulties arise.

For the classical survey of the history of this, as indeed of other tax topics, our law is indebted to Lord Macnaghten. His speech in the case of *A.-G.* v. *London County Council* [1901] A.C. 26 (the first L.C.C. case) is certainly one of the most important in the case-law of income tax, and, incidentally, is the one containing the ubiquitous, though not entirely self-explanatory, aphorism "Income tax, if I may be pardoned for saying so, is a tax upon income." On pp. 37 to 40 his lordship reviews in chronological order the various statutory provisions relating to the deduction of income tax at source, beginning with the imposition of the tax in 1799 and continuing as far as the celebrated Customs and Inland Revenue Act, 1888, s. 24 (3) of which (precursor of the present General Rule 21) was in question before the House of Lords in the case then under consideration.

Lord Macnaghten points out that it was in 1803 that the principle was established of taxing income at its source and afterwards distributing the burden among those upon whose shoulders it ought to fall. The legal position existing between 1803 and 1888 (save, of course, for the period of twenty-odd years after Waterloo, when the income tax was in blissful abeyance) was that the taxpayer liable to an annual payment, *whether payable out of any subject of charge or not*, was authorised to deduct and retain the tax upon the payment which he was bound to make. The words italicised indicate a consideration which was soon to have a crucial bearing.

A provision in which they are critical is prominent in s. 102 of the Income Tax Act, 1842, which, after creating a charge to tax under Sched. D on "annuities, yearly interest of money and other annual payments," goes on to provide that "in every case where the same shall be payable out of profits or gains brought into charge by virtue of this Act no assessment shall be made upon the person entitled [to the payment], but the whole of such profits or gains shall be charged with duty on the person liable to such annual payment without distinguishing such annual payment," the person liable being entitled to deduct tax therefrom at a stated rate. A partly overlapping provision (s. 104) rendered necessary a certificate of the Commissioners before deduction could be made from a payment made out of profits chargeable under Sched. D.

Section 104 was relaxed in 1853 by s. 40 of the Income Tax Act of that year. By what Lord Macnaghten describes as "a change in ease of the taxpayer," the necessity for a certificate of the Commissioners was dispensed with altogether. The result was to leave the Crown insufficiently protected. "The person making the annual payment was not bound to make a deduction for income tax; if he did he was apparently not bound to account to the Crown, except in the case of payments out of rates" (Lord Macnaghten, *loc. cit.*). In a Scottish case (*Lord Advocate* v. *City of Edinburgh* (1903), 41 S.L.R. 1) the Lord Ordinary (Lord Stormonth Darling), adverting to this same absence of compulsion on the payer to deduct tax, says (at p. 3): "I suppose he only did it when it was his interest to do it, i.e., when the statutes allowed him to retain for his own benefit the tax so deducted on the ground that he had already paid tax on the interest as part of his own income."

The gap thus left in the armour of the Exchequer was stopped in 1888 by s. 24 (3) of the Customs and Inland Revenue Act. This subsection applied where any interest or annuity was not wholly paid out of profits or gains brought into charge to tax. "It is no longer optional," says Lord Macnaghten, speaking of the position after the Act of 1888, "for a person who has to make an annual payment to deduct income tax. He is bound to make the deduction and bound to pay over to the Crown the amount deducted unless the payment comes out of income which has already paid the duty." And this, broadly speaking, and subject to some points not relevant to the principle involved, brings the picture up to date.

A curious detail with which Lord Macnaghten does not deal is that the earlier statutes in this connection spoke only of annuities, yearly interest of money and other annual payments. This meant that short-loan interest, though from 1853 onwards taxable under Sched. D, was not covered by the deduction provisions (*Goslings & Sharpe* v. *Blake* (1889), 23 Q.B.D. 324). The net was cast a little wider by the 1888 Act, which applied to *any* interest of money (see *Lord Advocate* v. *City of Edinburgh*, *supra*). Deduction from the dividends of companies, under whatever schedule the original income falls, has always been separately dealt with (see now General Rule 20).

Though the 1888 section was intended to be grafted on the earlier legislation as an amending provision and not to stand out as a separate limb, traces of its independent growth are preserved in the clearest way in the codified system of General Rules appended to the 1918 Act. For the fundamental distinction between General Rules 19 and 21 is that in cases under the former it is in the interest of the payer to deduct tax—"the statutes allow him to retain it for his own benefit"—whereas the latter rule carries this sting in its tail, that the benefit goes entirely to the Revenue; it is the modern stop for the chink in the Crown's armour. There is no such thing as a separate r. 19 assessment, nor does the rule impose in itself any charge to tax. It merely regulates the incidence of tax already provided for—the profits out of which the payment is payable, having been brought into charge to tax—and spreads the burden in proportion over the persons ultimately entitled to the taxable income. On the other hand, a deduction under r. 21 (as amended by s. 26 of the Finance Act, 1927), not being wholly covered by taxed income, is followed by the delivery of an account by the payer and by an assessment on him. This is not only a spreading of the burden; it is also machinery for collection. The payer of the interest, etc., is acting as agent on behalf of the Revenue, and he does not discharge the duties of his agency until the assessment is made and satisfied. In other words, r. 19 corresponds to the proviso to s. 102 of the 1842 Act as supplemented in 1853, while r. 21 is s. 24 (3) of the 1888 Act

brought up to date. The historical difference in the types of payment caught by the rules is also preserved, so that, for instance, short interest may come within r. 21 but not within r. 19.

The difference in the permissible rate of the deduction should also be noted. Under r. 19 it is now that prevailing when the payment becomes due; the rate applicable for r. 21 is that in force at the time of payment.

These distinctions and the patchwork history of the provisions have not prevented learned judges from summarising them, on more than one occasion, as a single scheme. One of the most recent examples is of the very highest authority. Subsequent legislation (Finance (No. 2) Act, 1945, s. 21) has belittled the importance of the actual decision in *Allchin* v. *Coulthard* [1943] A.C. 607, but the speeches in the House of Lords are full of guidance on our subject.

Having outlined the present position under three heads Viscount Simon, L.C. (at p. 619) proceeds to put the whole matter into the following nutshell:—

"Subject to the difficulty which I am about to state, this scheme seems reasonably clear. The receiver of the annual payment is chargeable in respect of annual profits or gains arising from all interest of money, annuities and other annual profits or gains under Sched. D, para. 1 (*b*), but under rr. 19 and 21 the tax is collected at the source before payment to him. If the payment is made out of the profits or gains of the payer, he is entitled to reduce his payment by the amount of the tax, but the legislature is not concerned to insist that he shall do so, as the Crown will get the tax whether he does so or not. If and so far as the payment is not made out of profits or gains, the Legislature insists that the payer must deduct tax and account for it, for otherwise the Crown might not receive it."

The difficulty to which his lordship alludes must, together with other incidental but important questions, await discussion in another article. It does not affect the principle which this article has endeavoured to explain, and which so many judges have sought to underline that an annotated text of General Rules 19 and 21 could fill a fair-sized volume.

DIVORCE LAW AND PRACTICE

RECENT DECISIONS: DESERTION

(1) *Parties occupying the same house*

A very important appeal from the Willesden justices came before the Divorce Divisional Court at the beginning of the current law term in *Angel* v. *Angel* [1946] 2 All E.R. 635, which again raised the question as to the right of a husband or a wife to allege desertion at a time when the other spouse was continuing to occupy physically the matrimonial home. There the facts were shortly that the wife, who was applying for a summons on the ground of desertion, had with her husband's consent gone to live in South Africa in September, 1939, returning in January, 1946. On her return sexual relations were not resumed and in February the husband took one room in the house for his own use, locking himself away from his wife and getting his meals outside the house. On these facts the justices held that desertion had not been proved, and they based their decision on the recent case in the Court of Appeal of *Weatherley* v. *Weatherley* [1946] 2 All E.R. 1, in which it was held that the wilful and unjustifiable refusal by a wife to continue sexual intercourse did not of itself constitute desertion where the parties continued to share the matrimonial home and to live together in every other sense of the word. In setting aside the order of the justices dismissing the wife's summons and remitting the case for a rehearing, Lord Merriman, P., pointed out that the wife had never put forward the absence of sexual relations as an element in the case and had not contended that her husband had refused her rights which she had desired. He stated, however, that *Weatherley's* case was not entirely irrelevant, but that it had a very slight bearing indeed on the case then before him and was only to be considered in conjunction with the other facts of the case.

On the broader issue, however, as to whether or not the husband could be said to be guilty of desertion while he continued to live under the same roof as his wife, he emphasised the importance of the appeal as an appeal, in that it was the first case which had come before the court by way of appeal as opposed to cases of first instance where similar facts had been considered, and he referred to certain previous authorities. In *Smith* v. *Smith* [1940] P. 49, a wife's petition for divorce on the ground of desertion, the facts were that a short while after the marriage, the husband, as a result of quarrels, withdrew from his wife's bedroom and made a home with his mother in the basement of the same house. He slept, however, with the son of his first marriage on the first floor, while his wife remained in possession of the ground floor, she being allowed by him the sum of £1 per week. This state of things had continued up to the filing of the petition, except that the husband's mother had died in 1932, and that payments were made on a different scale, the husband leaving small sums of money in different parts of the house where the wife could pick them up without any word being said between them, there being no agreement or arrangement for the separation. On this set of facts the President held that the husband had deserted his wife for the statutory period and he granted a decree *nisi*.

In order to appreciate the basis of this judgment, reference should be made to two earlier cases, each of which raised the same issue as *Smith's* case and *Weatherley's* case, namely *Powell* v. *Powell* [1922] P. 278, and *Jackson* v. *Jackson* [1924] P. 19. In *Powell's* case, which according to the report was a wife's petition for divorce on the ground of adultery and desertion, and not, as stated by the President in *Angel's* case, a restitution suit, the husband was held guilty of desertion where he had withdrawn from his wife's bed, avoided her society and secluded himself from her in a separate part of the common home which had a separate entrance, and in which he threatened to set up a separate establishment with another woman. In *Jackson's* case, an appeal from a finding of magistrates that a husband was guilty of desertion, it was held that the mere refusal or abandonment of sexual intercourse while the parties continued to live together under the same roof did not constitute desertion. In considering the bearing of these two cases' in *Smith's* case, the President regarded them as high-water marks, indicating on each side of the line how far such a state of things could or could not be held in law to amount to desertion, and he defined the issue in that case as being whether the facts fell on the "*Powell* v. *Powell* side of the line, or on the *Jackson* v. *Jackson* side of the line." In *Angel's* case the President has brought this example up to date by amending his judgment in *Smith's* case, saying that the appeal before him raised the question as to whether it was on the "*Smith* v. *Smith* side of the line or on the *Weatherley* v. *Weatherley* side of the line."

The consideration, therefore, in any given case, of the question whether or not there has been such a desertion is one not easily determined, and, of course, it must depend on the facts in each particular case. Where these show a completely separate establishment, even under the same roof, as in *Powell's* case, proof of desertion is more easily established, but even the physical sharing of the same matrimonial home has been held not to be a bar to an allegation by one spouse of desertion on the part of the other if the parties have had no common life. Thus, in *Wilkes* v. *Wilkes* [1943] P. 41, desertion was found where for more than a year preceding a husband's actual departure from his wife in June, 1938, two years prior to the date of her petition for divorce, the parties were living under the same roof but had no common life. There the husband never slept with his wife again, and refused to share her sitting-room or to have meals with her,

and, except for the facts that she paid the mortgage instalments on the house which was in the husband's name, and that he from time to time took food from her store and ate it, their lives were separate. Again, in *Wanbon* v. *Wanbon* [1946] 2 All E.R. 366, a decree was granted to a husband although his wife had left the matrimonial home only six months before the filing of the petition for divorce. There, however, for a period of more than ten years previously the wife had withdrawn from his bedroom and had refused him marital relations, during which time she never addressed a word to him except to find fault with him, and refused to cook his meals, make his bed, mend his clothes, or to perform any wifely duty for him whatever, although the parties had continued to live not only under the same roof but in the same household. It may be noted that the principle of this case was applied in *Scotcher* v. *Scotcher* (1946), 62 T.L.R. 517, where desertion on the part of a wife was proved in an undefended petition for divorce. There Willmer, J., in an exhaustive judgment, in which the previous cases were considered, distinguished the case from those of *Jackson* and *Weatherley*, and came to the conclusion that the facts showed that the conduct of the wife, taken as a whole, including her refusal of sexual intercourse, amounted to such a total disregard of the fundamental obligations of matrimony as to afford evidence of an intention on her part to desert, although the parties had been living apart for a period of over three years and there was no element of their sharing the same house at a time when desertion was alleged.

On the other hand, *Smith's* case was distinguished in *Littlewood* v. *Littlewood* [1943] P. 11, which is an example of a case which fell on the *Jackson* v. *Jackson* side of the line. There a decree was refused, and it was held that a wife was not guilty of desertion where she was engaged in employment which kept her away all day and sometimes until 9 or 11 p.m. Since June, 1938, she had never slept in the same bedroom with her husband during the material three years, spoke to him but little, and generally ignored him in the home, but cooked the food and occasionally performed other domestic duties, finally leaving him in June, 1941. In dismissing the petition, Pilcher, J., stated that mere disagreeable conduct and failure to institute or continue conversation by one party, even when added to the other matters mentioned above, hardly seemed to him to be sufficient to ground a claim for desertion by the other party when both parties continued to occupy the same house.

There the matter must be left, with the judgment in *Angel's* case as the last authoritative judicial pronouncement on this difficult question. Should the dissenting judgment of Scott, L.J., in *Weatherley's* case be upheld in the House of Lords, to the effect that the refusal of sexual intercourse is such a fundamental repudiation of the marriage obligations that it could justifiably be considered as desertion, then it will, of course, be necessary for the principles laid down by the above cases to be reconsidered. Until then, however, where desertion is alleged, although the parties have been living under the same roof, the issue to be decided is that raised in *Smith's* case, and the question to be answered is on which side of the line, the *Smith* v. *Smith* or the *Weatherley* v. *Weatherley* side, the case falls. (For a fuller discussion of *Smith's* case, see 84 SOL. J. 567, and for the effect of the refusal of sexual intercourse, see 90 SOL. J. 85, where other authorities than those discussed above were referred to.)

(2) *Constructive Desertion*

A further example of a case where the court refused to find constructive desertion is *Leng* v. *Leng* [1946] 2 All E.R. 590 (noted at p. 630 of this issue). There a husband appealed from the refusal of the justices to discharge a separation order which had been made in his wife's favour on the ground of his desertion where the facts showed that she was justified in having left the matrimonial home. After this order had been made the husband made what was found by the justices to be a *bona fide* offer on his part to resume married life, and the only question which therefore arose before them, which was the subject of the appeal, was whether or not she was justified in refusing to do so. The justices came to the conclusion that she was so justified by reason of the neurotic condition of the husband, and they refused to discharge the order, but the Divisional Court allowed the appeal, holding that such a condition was not in law sufficient ground to justify the wife in refusing to live with him, and pointing out the danger involved in such a finding, in that it would allow her after the lapse of the statutory period to obtain on the same ground a decree of divorce.

COMPANY LAW AND PRACTICE

COMPANIES BILL—I

THE introduction of this Bill in the House of Lords by the Lord Chancellor is an event of some considerable importance in the world of companies. It is a document of 113 pages containing 109 clauses and no less than seven schedules. It is based to a very large extent on the report of the Cohen Committee, which was published in July last year, though in some respects it covers matters which were not dealt with in that report. It is neither possible nor desirable in this column to discuss in detail all the clauses of this Bill, but it may well be of some interest to indicate the outlines of the topics dealt with and to deal at rather greater length with some provisions which seem to call for a more detailed discussion.

The full title of the Bill is of interest, and gives a general idea of its scope. It is called "An Act to amend the law relating to companies and unit trusts and to dealing in securities and to bring the law of bankruptcy and the law relating to the registration of business names into conformity in certain respects with the law relating to companies as so amended." Thus it will be seen that the field covered is fairly wide.

The Bill is divided into nine different parts, headed as follows: (1) Management and Administration; (2) Share Capital and Debentures; (3) Constitution of Companies and matters incidental thereto; (4) Enforcement and Registration of Charges; (5) Winding up; (6) Offences and legal proceedings; (7) Companies not registered under principal Act; (8) Amendments, etc., of Acts other than the principal Act; and (9) General.

The first clauses of the first part have to do with meetings Clause 1 is aimed at clearing up the obscurity in the wording of s. 112 of the Companies Act, which merely provides that a company must hold a general meeting every year. The phrase "annual general meeting" is only to be found in the margin. The new Bill provides that a special annual general meeting must be held in each year in addition to any other meetings in that year, and it may well become advisable in the case of certain companies to alter their articles of association to make the articles require such annual general meeting to be held.

There are also a number of provisions aimed at giving everybody plenty of time for preparing for general meetings, inserted to facilitate the control of companies by the members, which was an object that the committee thought it desirable to achieve.

Twenty-one days' notice is to be required for an annual general meeting and fourteen days for every other general meeting, except one for the purpose of passing a special resolution, instead of seven as at present, and the directors' report, balance sheet and other documents and notices of resolutions to appoint auditors are required to be sent out sooner than is at present the case.

With the same object of allowing members to take a greater part in the affairs of a company, provision is made for the circulation of resolutions proposed to be put forward by members at a meeting, and a memorandum not exceeding 1,000 words explaining it.

The provisions relating to demanding a poll at present in force in relation to meetings for passing extraordinary and special resolutions are proposed to be slightly varied and extended to all general meetings, and articles restricting this right are to be void. Further, it is proposed that a proxy should no longer have to be a member of the company as is very frequently required by articles at the present day, and that he shall be entitled to demand a poll and also to have the same right to speak at a meeting as a member. There is a considerable number of provisions dealing with the machinery of proxies, and in particular it is worth noting that, unless the articles otherwise provide, a proxy is not to be entitled to vote except on a poll. That is not a serious restriction, as he would have the right to demand a poll. There is also a provision in the Bill, as was recommended by the Committee, that notices of meetings should state with reasonable prominence that a member entitled to attend and vote may appoint a proxy to attend and vote instead of him, and that the proxy need not be a member of the company.

The next sub-division of this first part of the Bill is headed "minorities". Clause 8, which is the first of these clauses, proposes a substantial change in the law. It provides that any member of a company who complains that the affairs of the company are being conducted, not with a view to the interest of the whole body of members, but in a manner oppressive to some part of them (including himself), may petition for such an order as the court shall think fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the petitioner's shares by other members or for the surrender and cancellation of the petitioner's shares, and consequent reduction, or otherwise.

To justify making the order, it will have to be established that the company's affairs are being conducted in the manner complained of, that the facts would make it just and equitable to order the company to be wound up, but that the making of such an order would unfairly prejudice the part of the members who are being unfairly treated. It has always proved a matter of great difficulty to obtain a winding-up order on the grounds indicated, and it is therefore possible that the provisions of this clause would seldom be invoked. It may possibly be, however, that the alternative remedy to winding up may induce the court to hold more readily than has hitherto been the case that sufficient injustice has been proved.

The time limit of seven days for the application to the court by a dissentient shareholder for the cancellation of a variation of the rights of a particular class of shares has frequently proved too short, and the Bill provides that this time limit should be extended to twenty-one days. Obviously, it would be impossible to give a much greater time than this, but even so, if anyone is proposing to make such an application, it will still in most cases have to be treated as a matter of great urgency.

The remaining matter which is dealt with in this sub-division of the Bill is the compulsory acquisition of shares of shareholders dissenting from a scheme or contract for the sale of shares which has been approved by a nine-tenths majority of the holders of those shares. The provisions are of a fairly elaborate nature, and I do not propose to consider the details. There is, however, one substantial alteration which requires to be noted. Section 155 of the Companies Act provides for the acquisition of the shares of dissenting shareholders where a scheme or contract involves the transfer of the shares or a class of shares of a company, but it only operates where the scheme has been approved by the holders of not less than nine-tenths in value of the shares affected. The provisions in the Bill provide that the shares affected shall refer only to the shares proposed to be transferred and shall not include any shares of the class involved which are already held by the purchasing company. Under the provisions of the Bill, therefore, a company which already held more than one-tenth of the class of shares it was proposing to acquire would still be able to come to an arrangement for the purchase of the remaining shares of that class, unless one-tenth of the holders of the outstanding shares dissent.

The next sub-divisions of this first part of the Bill deal with accounts and directors. Each of these subjects will require fairly detailed consideration as they would effect considerable changes in the present position, and I propose to postpone considering these clauses until later.

There are a number of provisions relating to the register of members and annual returns, most of which are in the nature of machinery. One important change would, however, be effected by cl. 43. It was suggested in the report that different provisions might be made applicable to private companies which were really private companies, from those applicable to companies which are not particularly private, and this clause draws such a distinction in the case of the annual returns of a private company.

It provides that a private company should no longer be exempt from the obligation to include in its annual return a copy of the balance sheet and other documents required to be sent with the balance sheet, unless certain conditions are satisfied at the date of the return and have been uninterruptedly satisfied since the coming into force of the section.

In outline, these conditions are as follows: (1) no person other than the holder of any of the company's shares or debentures has any interest in them and no shares or debentures are held by any body corporate; (2) there are not more than fifty debenture-holders; (3) none of the directors is a body corporate nor is there any arrangement whereby the policy of the company may be determined by persons other than the directors, members or debenture-holders or trustees for debenture-holders.

There are subsequent provisions which provide that these conditions shall be considered as satisfied if the breach of of them is due to such things as the shares being held by executors or the trustees of a family settlement or the shares have been charged by way of security for a loan. If the clause becomes law, it will be necessary for the directors of all private companies to consider whether or not they will in future have to send a copy of the balance sheet with their annual returns, and for that purpose these provisions will have to be closely studied. It seems likely that only comparatively few private companies would be entitled to take advantage of the exemption.

The remaining clauses of the first part deal with the registered office and name.

Section 17 of the Companies Act, which deals with the names of companies, is proposed to be repealed, but I will deal with this topic on another occasion.

A CONVEYANCER'S DIARY

CONVEYANCE SUBJECT TO TENANCY

In the seventh edition of Burnett's "Elements of Conveyancing," the learned editor states, at p. 120: "When it is desired that the conveyance should take effect subject to certain existing estates or incumbrances, the habendum should expressly state that the purchaser shall hold subject to such estates or incumbrances. The reason for this is that unless the property is expressly conveyed subject to them, the vendor will be liable on his implied covenants for title in the event of such incumbrances being enforced against the purchaser. This is so even though the purchaser at the time of the conveyance was aware of such estates or incumbrances, and though they are referred to in the recitals to the conveyance." This statement of the position appears to me to be accurate, and no doubt all draftsmen are careful to see that the estate to be conveyed is expressed to be conveyed subject to such incidents as mortgages or long terms of years where they exist.

But I believe that the practice in a good many parts of the country (and indeed possibly everywhere) is different where the sale is subject to "tenancies," using that word in a

loose and untechnical sense to mean terms of years short enough not to be dignified in ordinary parlance by the word "leases." I was talking the other day to three solicitors, two from the country and their London agent, all experienced practitioners, about a case where difficulty had arisen from the fact that a conveyance had been taken without an express reservation of this kind. I commented to the same effect on the passage quoted above from Burnett, and was told that none of them had ever heard of such a thing in connection with "tenancies," and that it would in their view be positively contrary to normal practice to make a conveyance expressly subject to "tenancies." Now, I agree that the normal practice is as my friends stated; but it is wrong, and dangerous, as the case in question proved. It might be said that the contract always refers to "tenancies," where they exist. But the contract is merged in the conveyance, and the only way in which it can afterwards be prayed in aid is to support a claim for rectification of the conveyance; and rectification is an exceptionally difficult form of relief to obtain.

I am not clear how recently the practice has grown up. There seems to be nothing in the current edition of Prideaux on the point. In the fourth edition of Williams, vol. I, p. 662, the learned editors state: "If the property were sold subject to some particular incumbrance, which is to remain undischarged, such as a mortgage, restrictive covenants, an easement, or a subsisting tenancy for any term, the vendor is entitled to require that it shall be expressed in the conveyance that he conveys the land sold subject to the incumbrance in question. And the conveyancer acting for him should be particularly careful to see that this is done; as the statutory covenants for title, which are now usually incorporated in conveyances on sale, include covenants for right to convey or quiet enjoyment, subject only as *expressed* in the conveyance, and for freedom from incumbrances other than those subject to which the conveyance is *expressly* made."

The wrong practice has, perhaps, been helped to grow up by the jargon which we allow ourselves to adopt. In ordinary speech the words "lease" and "tenancy" are used as meaning respectively long and short terms of years, though I have never heard where the line is drawn. This usage obscures the fact that a lease is a document with a seal on it, while a tenancy is not a document at all but a legal state of affairs in which a tenant holds of a landlord. A "lease" may be either legal or equitable, provided that it starts by being long; a lease must be legal and may in law be for a week or less. Again, a "tenancy" is not necessarily equitable, since a legal estate for three years or less may be created by parol (L.P.A., s. 54 (2)), and a weekly tenant has a legal estate; but a "tenancy agreement" will still create an equitable estate if the term is for a hundred years or more. There is a lot of loose usage and consequent loose thought on the subject, which obscures the fact that as against a purchaser for value without notice even a weekly tenancy, being a legal estate, is good; and as against any other sort of purchaser every term of years, be it a week or a thousand years, legal or equitable, is good. In any of these cases a purchaser, finding himself saddled with a prior legal or equitable estate not mentioned in his conveyance, is *prima facie* entitled to sue on the covenants for title, though the vendor may displace that right by succeeding in proceedings for rectification. A weekly tenancy is just as much a prior estate as a mortgage term, and, indeed, in these days it may be more difficult to get rid of a weekly tenant, having regard to the Rent Acts, than to pay off a mortgagee. The part of the statutory covenant for title implied in a conveyance by a beneficial owner (L.P.A., Second Schedule, Pt. 1) which is commonly described as the covenant against incumbrances is, in fact, not restricted to incumbrances: it is "that freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims and demands, other than those subject to which the conveyance is expressly made, as, either before or after the date of the conveyance, have been or shall be made, occasioned or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys . . ." Whatever these words mean (and it is not always easy to say), it is perfectly clear that there is no distinction, for the purposes of the covenant, between legal estates and equitable interests, or between mortgage terms and other terms, or between long terms and short terms.

LANDLORD AND TENANT NOTEBOOK

INUNDATION AND FRUSTRATION

"AND many times great Tides are occasioned by strong Winds," observes Coke in his note to *Keighley's Case* (1609), 10 Co. Rep. 139*a*. The truth of this observation has been borne out by recent events in various parts of the country; just before commencing this article, I learned of the uprooting and disappearance of a seaside kiosk, which weighed 5 cwt. and had been bolted to the esplanade. Such events may have caused many tenants to wonder how, if at all, their rights and liabilities may be affected by flooding of the demised premises.

Keighley's Case did not directly concern itself with this problem; it was a case upon the Statute and Commissions of Sewers, and defined the Commissioners' functions in the event of a sea wall, which someone was bound by prescription to repair, being broken by the "sudden and unusual increase of water." In his note, the learned author discusses the apparent conflict between the principle of *salus populi est suprema lex* and *impotentia excusat legem*; the nearest he gets to matters affecting landlord and tenant is a pronouncement to the effect that if demised land "be drowned by the extraordinary rage and violence of the sea without the tenant's fault, it is no waste."

But as regards rent and other liabilities, surprisingly little has been heard of such problems, and most of what has been said and written belongs to the category "persuasive" rather than to that of "authoritative." The leading case is undoubtedly *Paradine* v. *Jane* (1647), Aleyn 26, which arose out of what would now be called war damage. For it laid down the general principle that where a party by his own contract creates a duty or charge upon himself he is bound to make it good if he may, notwithstanding any accident by inevitable necessity, since he might have provided against it by his contract. Therefore, if a lessor expressly covenant to pay rent, he ought to pay though the house be burnt by lightning, thrown down by enemies, etc., and though the land be inundated.

I believe that the only English case arising out of flooding in which the principle came into play was *Carter* v. *Cummins*, decided in 1665, but not reported at the time; it was referred to in the course of *Harrison* v. *Lord North* (1667), Cas. in Ch. 83. The latter was a claim by a tenant whose house had been requisitioned and used as a military hospital by the Parliamentarians to relief in respect of rent accrued due during the period. His argument was "render implies apprendre," but the answer, that if a tenant was held out by rebels that was no Equity to excuse rent, was accepted by the Chancellor. *Carter* v. *Cummins* was cited because in that case a tenant whose wharf had been swept away by a flood had sought similar relief; also without success, though it may be of interest to note that the Chancellor was willing to grant relief against forfeiture for non-payment of rent. But the applicability of the principle has been referred to again and again in other cases, e.g., *Hart* v. *Windsor* (1844), 12 M. & W. 68, a destruction by fire case, in which Parke, B., said: "the tenant can neither maintain an action, nor is he exonerated from the payment of rent, if the house demised

be blown down or destroyed by fire, or gained upon by the sea"; and in *Matthey* v. *Curling* [1922] 2 A.C. 180 both *Paradine* v. *Jane* and *Carter* v. *Cummins* were cited with approval by Lord Atkinson (p. 233).

In the meantime, Equity had toyed with the idea of intervening if a tenant were agreeable to surrendering the lease of the submerged property; but *Earl of Meath* v. *Cuthbert* (1876), I.R. 10 C.L. 395, shows that nothing can have been achieved in that direction. The defendant, sued for rent and breaches of a repairing covenant, pleaded that the premises were on the shore of the sea, that their surface had consisted of loose stones and shingle from time to time thrown up by the sea, also of sandy beach, and that they had been utterly valueless at the time of the demise; he had since erected a wall between them and the foreshore, which belonged to the plaintiff; but the plaintiff had caused part of the foreshore to be dug up and carted away, with the result that storm and tempest, together with great violence and encroachment of the sea, had prostrated his wall, and the land was again valueless. Morris, C.J., treated the arguments advanced in support of this plea with scant respect. "We asked in vain what name was to be given to these defences. In reality, the main objection to them is that nobody can understand what they mean . . ." The plaintiff's demurrer was allowed; but one may remark, in the light of more recent English authorities, that it is a pity that the defendant did not counter-claim for breach of covenant of quiet enjoyment and derogation from grant.

The suggestion has been made that flooding might give rise to a right to have rent apportioned. This is based on "Rolle's Abridgment," the learned author of which divided (p. 236) causes for apportionment into three groups: Act of Parties, Act of God, and Act of Law, respectively sub-divided into nineteen, eight and six paragraphs. And in the first two paragraphs of the second group he says that if part of demised property be inundated by fresh water there can be no apportionment because the soil remains and the tenant has exclusive fishing rights and reclamation is possible; if by the sea, however, there is a right to apportionment because, though the soil remains, the public can fish and reclamation is impossible. My Norman French being rusty, I have accepted the translation usually found of the "surround" in "surround per fresh ewe," etc., as "inundated." But, apart from the fact that the learned serjeant himself mentions Year Book authority to the contrary, heed must be paid to the publisher's warning that the Abridgment was compiled from notes not originally intended for publication; and there is no reported case of a claim for apportionment succeeding even when the sea has broken in.

Such being the position, I think it can be said that until the decision in *Cricklewood Property and Investment Trust, Ltd.* v. *Leighton's Investment Trust, Ltd.* [1945] A.C. 221 (for a full review of which, see 89 SOL. J. 157), a tenant whose lease did not protect him could entertain no hope of exoneration from any liability in the circumstances visualised. And I may say at once that the hope that has been created by that case depends on an *obiter dictum* and suggests that relief might be afforded in very special circumstances only.

The decision was one in which it was held that a building lease had not been frustrated by the restrictions on building imposed by Defence Regulations. On this point the learned law lords were unanimous. But the question arose, and was discussed, whether a lease was subject to the doctrine of frustration at all. On this Lord Porter expressed no opinion; Lord Russell of Killowen and Lord Goddard said that the doctrine could never apply to a lease; Lord Simon, L.C., and Lord Wright that there might be circumstances in which it would.

The circumstances visualised by Lord Wright, when it comes to giving hypothetical examples, are facts connected with changes of law rather than with changes of weather. But the learned Lord Chancellor's speech includes the following: "Where the lease is a simple lease for years at a rent, and the tenant, on condition that the rent is paid, is free during the term to use the land as he likes, it is very difficult to imagine an event which could prematurely determine the lease by frustration—though I am not prepared to deny the possibility, if, for example, some vast convulsion of nature swallowed up the property altogether, or *buried it in the depths of the sea*. The lease, it is true, is of the 'site,' but it seems to me not inconceivable that, within the meaning of the document, the 'site' might cease to exist. If, however, the lease is expressed to be for the purpose of building, or the like, and if the lessee is bound to the lessor to use the land for such purpose, with the result that at the end of the term the lessor would acquire the benefit of the development, I find it less difficult to imagine how frustration might arise."

The two types of leases mentioned, of course, contrast strongly, but they are not meant to, and do not, exhaust the possibilities, and indeed far and away most leases belong to neither category. A tenancy under which the tenant is unrestricted in point of user must be as uncommon as one in which he is bound to improve, and if the kiosk mentioned in my second sentence was the subject of a demise, it is unlikely that it fell within either of the groups mentioned by Lord Simon. What was said about the site might, however, nevertheless be in point; if the site vanished with the kiosk, it would seem that the reasoning would apply even if there were restrictive covenants. But it remains advisable for those who peruse, on behalf of intending tenants, draft leases of property exposed to flooding, to insist on the insertion of a provision for abatement or suspension of rent not only in the event of fire, but also in the event of inundation.

TO-DAY AND YESTERDAY

December 16.—After the Reformation Gray's Inn paid to the Crown the rent it had formerly paid to Sheen Priory and received from the Crown the payment formerly made by St. Bartholomew's Priory in discharge of its obligation to provide a chaplain for the Chapel. In 1651 negotiations were initiated to exchange the two debts, which balanced each other, and Nicholas Parry, the chief butler, signed a contract, dated 16th December, 1651, on behalf of the Society to carry this into effect. The transaction was completed in the following June. On the Restoration the Crown repudiated the arrangement made during the Commonwealth and it was not till 1734 that the Society finally adjusted the matter.

December 17.—On 17th December, 1815, the future Lord Campbell wrote to his brother: "If I remain obscure I have no reason to complain of my profits. In the last week I made above 100 guineas . . . At Guildhall by nine o'clock—remain in court till near four—come home—eat a mutton chop and a potato sent to my chambers—no wine nor small beer—begin immediately to read my briefs—go out to consultations—sit up till one to answer cases or write out my Reports . . . My health was never better."

December 18.—Tom Taylor was a parson's son who fell into bad company and joined a gang of pickpockets. Once at Guildford he distracted the attention of the people preparing for the fair by clowning in the pillory, while his confederates emptied their pockets. At Drury Lane playhouse he once picked the pocket of the gentleman sitting next to him. Next day, trusting in the disguise of a different suit of clothes, he sat next to the same gentleman and tried to repeat the process. But, meanwhile, the victim had had fish-hooks sewn inside his pocket, and Taylor, being caught, had to accompany him to the Rose Tavern and send for his confederates to pay 80 guineas for his release. After that the gentleman caned him unmercifully and turned him over to the crowd who pumped and ducked him and broke an arm and a leg. He then decided that housebreaking and burglary were safer and for a while he enjoyed a very successful career till, having set fire to a barn to distract the attention of the occupants of a dwelling-house, he was caught carrying off a trunk full of plate and money. He was hanged at Tyburn on 18th December, 1691, aged about twenty-nine.

December 19.—On 19th December, 1863, Serjeant Shee was sworn in as a judge of the Queen's Bench, the first Roman Catholic

to be raised to the English bench under the Roman Catholic Relief Act. He had long been at the head of the Home Circuit and was one of the most popular leaders in London. He died of apoplexy in 1869.

December 20.—John Smith, a peruke maker, was persuaded by another of his calling to turn highwayman, but the adventure was brief. At their first setting out, the sight of the gallows at Tyburn, as he rested on a stile near Paddington, nearly turned him back, but his companion kept him at it. They stole a mare and for about a week Smith held up coaches in Epping Forest, on Hounslow Heath, and on Finchley Common. Then he was trapped in a wood called Colefall and taken to Muswell Hill, where powder and shot and a mask were found on him. He was hanged at Tyburn on 20th December, 1704.

December 21.—On 21st December, 1764, John Fetch, a White Cross Street baker, was convicted before Sir John Fielding of having alum in his bakehouse to adulterate the flour. He was fined £4.

December 22.—In 1762 Peter Annet, who had published nine numbers of the "Free Inquirer," attacking Old Testament history, was condemned to a month's imprisonment and to stand twice in the pillory. His first exposure was at Charing Cross, his second, on 22nd December, at the Royal Exchange.

THEFT IN COURT

The inwardness of the Old Bailey has not perhaps changed as much as its outward appearance. Those lovers of tradition who might fear that the place was becoming "goody-goody," as compared with the better old days must have been reassured recently by the news that a South African sheep farmer, sitting by the side of the dock to hear the final stages of the case against a man who was convicted of tricking him out of £4,500, had £35 in £5's taken from his hip pocket. Beside this neat little coup, there was nothing very adroit (only a certain presence of mind) in an incident at the Nottingham Assizes about the same time when the electric light failed and in the darkness the money collected from counsel and solicitors for their tea vanished from the commissionaire's room. The neatest exploit of this class in recent years occurred in Cairo in 1939, when a lawyer sitting next to the dock missed first his handkerchief and then his wallet. A detective called in by the judge went straight to the prisoner whom he identified as a notorious pickpocket. The man admitted that he had picked the lawyer's pockets for amusement. With some professional pride he added that he had swallowed the contents of the wallet. The future Lord Campbell, when he was young at the Bar, was once defending a man and had occasion to go to the dock for a minute or two to consult him. He got him off but later feeling for his purse, containing several bank-notes, he found it gone. When the judge, Lord Chief Baron Macdonald, heard about it he exclaimed: "What! Does Mr. Campbell think that no one is entitled to take notes in court except himself?" For Campbell was then just embarking on the enterprise of law reporting.

JUDGES NOT SAFE

This topic recalls a classical example of one of Sir Thomas More's practical jokes. While his City duties took him to the Old Bailey, there was a tiresome old justice "who was wont to chide the poor men that had their purses cut for not keeping them more warily, saying that their negligence was the cause that there were so many cutpurses brought thither." To teach him a lesson, More went to a famous cutpurse then in prison awaiting trial and promised to help him, if he could manage to cut the justice's purse while he sat on the bench. Next morning when the thief was arraigned, he claimed that he could explain everything he was charged with if only he could be allowed to speak privately with one of the members of the court. Being told to choose which he would have a word with, he chose the old justice and, while he whispered in his ear, he deftly cut his purse and then, taking his leave, went back to his place. When he knew the deed was done More proceeded to propose a subscription to help a needy fellow who had been acquitted and himself set a generous example. The old justice then, feeling for his purse to give a trifle, found it gone, to his great amazement, for he was sure he had it when he went into court. More asked jokingly "What! Will you charge your brethen on the bench with felony?" Then he called on the thief to give back the purse, suggesting that in future the justice should not censure other men's negligence so bitterly. There is an old story of a judge or magistrate, who happening to remark that he had forgotten to bring his watch that morning, gave a clue to a thief listening in court to go to his house pretending to be a messenger sent to fetch it. It is told of many legal personalities. Campbell tells it of Sir John Sylvester, Recorder of London.

COUNTY COURT LETTER

Liability on Stopped Cheque

IN *Hollinson* v. *Frank Hancock* (1939), *Ltd.*, at Stafford County Court, the claim was for £96 15s. against the defendants as drawers of a cheque, payment of which had been stopped. The plaintiff was an engineer, and his case was that, having repaired the defendants' car, he received the cheque in payment. No defence was entered, and the defendants did not appear. The plaintiff had received a letter, however, which enclosed another cheque, for £105 5s. 3d. in full settlement, but with a notice that the defendants were dissatisfied with the repairs and wished to counterclaim. His Honour Judge Tucker gave judgment for the amount claimed, with costs.

Decisions under the Workmen's Compensation Acts

Crushed Ribs

IN *Tipton* v. *Thomas*, at Shrewsbury County Court, the case for the applicant was that, while driving a team of horses on the farm of the respondent, he (the applicant) sustained crushed ribs when the horses bolted. He had since been unable to resume work, owing to neurasthenia. The respondent's case was that incapacity had ceased, as the applicant was organically fit for work. By consent, His Honour Judge Samuel, K.C., made an award of £200 in complete discharge of the claim.

Injury to Youth's Hand

IN *Wakefield* v. *Lyne and Son*, at Grantham County Court, the applicant was aged sixteen, and his case was that a month after he started work as a printer his right hand was caught in a machine with a hand feed. He had hoped to become a compositor at £6 a week, but could not now straighten his first finger. The respondents' case was that the applicant was now a time clerk earning £1 a week, i.e., more than his pre-accident wages. His Honour Judge Shove made a declaration of liability. When the applicant was twenty-one, and if his anticipations of alternative employment were not fulfilled, he might be entitled to a review.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber and a stamped addressed envelope.

Undivided shares — ABSOLUTE INTERESTS — TRANSITIONAL PROVISIONS OF THE LAW OF PROPERTY ACT, 1925

Q. What documents are necessary in the following circumstances to convey effectively the legal estate in freehold property? In 1901 certain land was partitioned to three sisters, Jane, Fanny and Helen, as tenants in common. They erected two houses on the land. In 1931 Jane died, by her will leaving all her share in the property to the other two sisters. Helen is the surviving executor of this will. In 1935 Fanny died, leaving her then half share in the cottages to Helen for life, and thereafter to four nephews and nieces. The three executors of this will are still living. It is now desired to sell the property. No assents have been executed. Would a conveyance by Helen and the executors of Fanny effectively convey the legal estate to a purchaser? It does not seem that Helen can now assent as executor of Jane's will, as Fanny has since died. Besides the two cottages mentioned, there is also other property concerned which is not being dealt with at the moment, and your suggestions as to any necessary assents to put the titles in order for the future would be welcomed.

A. On 1st January, 1926, the legal estate vested in the three sisters upon the statutory trusts. Helen is the surviving trustee of those trusts. She should appoint an additional trustee and make title under those trusts. The appointment should, of course, extend to the property not to be sold. As to the material transitional provision, see the Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (2).

Mr. H. C. H. FAIRCHILD, the present Chief Clerk of the Honourable Society of Lincoln's Inn, will succeed Mr. N. Y. Marriott, who retires at Christmas after fifty-six years' service, in the post of Under-Treasurer and Steward.

REVIEW

Hill and Redman's Law of Landlord and Tenant. Tenth Edition. By W. J. WILLIAMS, B.A., of Lincoln's Inn, and Miss M. M. WELLS, M.A., of Gray's Inn, barristers-at-law. London: Butterworth & Co. (Publishers), Ltd. 63s. net.

As in the case of earlier editions, this work is divided into three main parts: The Common Law, Acts affecting Landlord and Tenant, and Emergency Legislation. In each case the matter has grown, especially in that of Acts affecting Landlord and Tenant: in no case will the reader have any cause to complain on that score, for the work is a comprehensive work and the variety of relationships which fall within the description of "lease," many of which demand special treatment, is considerable.

There is one entirely new feature—a chapter, at the end of Part I, dealing with the perusal and preparation of draft leases. This will prove of great assistance to the busy practitioner. The point that the landlord is under little liability apart from express covenant is not only made, but worked out, and its implications emphasised; the "concealed trap" to which attention is drawn (p. 607) is one which might well escape the notice of an adviser with all too little time for the exercise of imagination and critical faculty.

Among the statutes dealt with in Part II, those concerned with agricultural leases, of course, figure prominently, and one is glad to find that three sets of provisions contained in the Agriculture (Miscellaneous War Provisions) Act, 1940, and the Agriculture (Miscellaneous Provisions) Acts, 1941 and 1943, follow the treatment of the Agricultural Holdings Act, 1923; for some of these provisions have a way of taking one by surprise if one has been, as it were, brought up on A.H.A., 1923. The important Defence Reg. 62 (4A) is to be found in Part III.

The Rent Acts also fall within Part II, and they indeed account for most of the added matter; the editors have given us a lengthy Introductory Note on the subject, and anyone not familiar with the legislation concerned will gain by reading their observations before attempting to tackle the particular problem facing him. But there is room for improvement in one minor particular: the Index, though a full one, does not enable one to turn up the "grounds for possession" of controlled properties quickly; the reader who, say, wishes to see the latest on "Waste" or "Nuisance" *as* grounds for possession will not find the references by consulting "Waste" and "Annoyance," or even "Rent Restriction" in the Index. However, one realises that the book is not meant to be a "handy guide."

OBITUARY

SIR GEORGE BARNES

Sir George Stapylton Barnes, K.C.B., K.C.S.I., Member of the Council of the Viceroy of India from 1916 to 1921, died on Monday, 9th December, aged eighty-eight. He was called by the Inner Temple in 1883.

MR. H. MASON

Mr. Herbert Mason, solicitor, of Messrs. Lindsay, Greenfield and Masons, solicitors, of Clement's Lane, E.C.4, died on Saturday, 30th November, aged eighty. He was admitted in 1889.

Three new rent tribunals have been set up. This brings the number of rent tribunals in England to fifty-nine. Details:—

Chelmsford and Colchester—Brightlingsea, Leiston-cum-Sizewell, Stowmarket, West Mersea, Witham and Woodbridge, and the rural districts of Braintree, Deben, Melford and Samford Tendring. Chairman: Mr. E. R. Booth. Member and Reserve Chairman: Sir Henry Bunbury. Member: Mr. C. O. Fensom. Reserve Member: Mr. J. W. Boardman. Clerk: Mr. A. L. French White. Office: 31, St. Johns Street, Colchester.

Bodmin, Falmouth and Penzance—Camborne-Redruth, Newquay and St. Austell and the rural districts of Kerrier, Liskeard and St. Austell. Chairman: Mr. J. Hoyle. Member and Reserve Chairman: Councillor P. T. Johnson. Member: Mr. W. P. Northey. Reserve Member: Mrs. H. K. Watkins. Office: Tarran Huts, Priory Road, St. Austell, Cornwall.

Hull—Bridlington, Haltemprice, Hornsea and Filey, and the rural districts of Beverley and Howden. Chairman: Mr. E. C. S. Stow. Member and Reserve Chairman: Mrs. E. Booth. Member: Mr. J. L. Kelly. Reserve Members: Mr. R. C. Holyday, Mrs. D. Saunders and Mr. F. F. Millner. Clerk: Mr. W. Allan. Office: Commerce House, Paragon Street, Hull.

NOTES OF CASES

HOUSE OF LORDS

Nicholls *v.* F. Austin (Leyton), Ltd.

Lord Thankerton, Lord Macmillan, Lord Wright, Lord Simonds and Lord Uthwatt. 12th April, 1946

Factory—Woodworking—Piece of wood ejected from machine—Injury to operator—Liability—Woodworking Regulations, 1922 (*S.R. & O.*, 1922, *No.* 1196)—*Factories Act*, 1937 (1 *Edw.* 8 *and* 1 *Geo.* 6, *c.* 67), *s.* 14.

Appeal from a decision of the Court of Appeal.

The appellant was employed in the factory of the respondents. While she was working at a woodworking machine, called a straight line edger, consisting of a circular saw fitted on a table, her hand was struck by an off-cut from the left-hand edge of the slab of wood which she was working, the fragment in question having flown out probably through the space between the surface of the table and the bottom of the hood which covered the saw and also the conveyors and rollers by means of which the wood to be worked was moved against it. The contention, negatived by Stable, J., was not persisted in that the machine was not properly fenced in accordance with reg. 10 of the Woodworking Regulations, 1922. Stable, J., awarded the employee £350 damages. The Court of Appeal reversed his decision, and she now appealed. Their lordships took time for consideration.

LORD THANKERTON said that the employee's case rested in the main on the contention that the employers were in breach of their duty under s. 14 of the Factories Act, 1937. By s. 14 (1), "Every dangerous part of any machinery . . . shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed . . . on the premises as it would be if securely fenced: Provided that, in so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation be secured by means of a fixed guard, the requirements of this subsection shall be deemed to have been complied with if a device is provided which automatically prevents the operator from coming into contact with that part." The Woodworking Regulations, 1922, made under the Factory and Workshop Act, 1901, were continued in force by s. 159 (1) of the Act of 1937 as if made under that Act, by s. 60 of which the Secretary of State had power to make special regulations for safety or health, and by s. 60 (2) (*c*) of which such regulations might "modify or extend . . . provisions imposing requirements as to health and safety", including s. 14 of the Act of 1937. Stable, J., accepted the argument that the obligation to fence imposed by s. 14 (1) was an obligation to protect not only against direct injury by contact with the machine, but also against indirect injury from something that flew off from the machine. The second point argued at the trial was whether the result of s. 60 (2) (*c*) was that the regulations of 1922 in effect became substituted for s. 14, so that compliance with the regulations operated as a discharge of the obligations imposed by s. 14. The employers maintained that the regulations did so operate, and that *Miller* v. *William Boothman & Sons* [1944] 1 K.B. 336 had so decided, the Court of Appeal having there held that reg. 10 of the regulations of 1922 modified s. 14 (1), so that compliance with the regulation prevented breach of the section. Stable, J., distinguished that case from the present on the ground that there the regulation had specifically made provision against danger from the cutting edge of the saw which had in fact caused the injury complained of, whereas the regulations were silent as to bits of wood thrown out by a machine. The judge accordingly held the employers liable to fence securely under s. 14 (1), that a guard to give protection against pieces flying out could have been fitted, and that they were therefore in breach of their statutory duty. The Court of Appeal reversed that decision, MacKinnon, L.J., saying that, it being admitted that the employers had complied with the regulations of 1922, to say that there was any surviving or additional duty on them under s. 14 was erroneous and not justified in view of *Miller* v. *William Boothman & Sons, supra*. The judges of the Court of Appeal appeared to have assumed that s. 14 (1) included protection against danger from bits of wood ejected from the machine. He (Lord Thankerton) thought that there was a simpler answer to the employee's contention, namely, that the obligation to fence imposed by s. 14 (1) was an obligation to provide a guard against any dangerous part of a machine, and did not impose any obligation to guard against dangerous objects ejected from the machine in motion. That matter depended solely on the making of regulations by the Secretary of State under the discretionary power conferred on him by s. 14 (3), which provided that he "may, as respects any machine . . . make regulations requiring the fencing of materials or articles which are dangerous while in motion in the machine." That view was amply confirmed

by the language used: s. 14 (1) dealt with the fencing of dangerous parts of any machine, and not with dangerous machines, whereas the dangerous articles did not necessarily emanate from a dangerous part of a machine. Further, the proviso to s. 14 (1) suggested safety from contact with the dangerous part. Section 14 (2) (*a*), again, continued the idea of guarding against contact by referring to prevention of the exposure of a dangerous part. The final words of s. 14 (3), above quoted, placed the matter beyond doubt, for they referred not to parts of machinery which were dangerous because they ejected articles in such a way as might cause injury, but to the materials themselves which were characterised as dangerous. It being admitted that no regulations had been made under those last words in s. 14 (3), he (his lordship) was of opinion that s. 14 imposed no obligation on the employers in respect of flying bits of wood, that they were therefore not guilty of breach of statutory duty, and that the appeal failed. That conclusion rendered it unnecessary to discuss *Miller* v. *William Boothman & Sons*, *supra*, and he expressed no opinion as to its correctness.

The other noble and learned lords delivered concurring opinions.

COUNSEL: *Sir Charles Doughty*, K.C., and *Edgedale*; *Beney*, K.C., and *Everett*.

SOLICITORS: *Shaen, Roscoe & Co.*; *Barlow, Lyde & Gilbert*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re Sound City (Films) Ltd.

Evershed, J. 28th October, 1946

Company—Variation of rights of preference shareholders—Petition to cancel variation presented within seven days—Fifteen per cent. of preference shareholders support petition—Shareholders do not give written authority to petitioner before presentation of petition—Whether any authority to present petition—Companies Act, 1929 (19 & 20 *Geo.* 5, *c.* 23), *s.* 61.

Motion.

The preference shareholders of S., Ltd., having passed a resolution by the requisite majority varying their rights, L, a preference shareholder, on the 9th September, 1946, presented a petition praying that the variation of the rights of the preference shareholders should be cancelled. The petition was presented pursuant to s. 61 of the Companies Act, 1929. By subs. (2) of that section it is provided that any application to have a variation of rights cancelled must be made within seven days after the resolution was passed and "be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose." The shareholders entitled to make the application are the holders of not less in the aggregate than 15 per cent. of the class of shares concerned, being persons who did not consent to or vote in favour of the resolution sought to be challenged. L presented his petition within the required period of seven days. He alleged that he had been appointed in writing by the persons specified in the schedule to the petition to present the petition on their behalf as well as on his own. The schedule contained a list of the names of 138 preference shareholders, holding some 21,343 shares, which represented more than 15 per cent. of the issued preference capital. Through inadvertence there were errors in the schedule. The number of the shares held was in some cases incorrectly stated and, in other cases, unknown to L, the shareholders had given proxies which had been used in favour of the scheme. The result was to reduce the effective number of shares below 15 per cent. On the 25th October, 1946, L filed an affidavit with a new list of shareholders, bringing the total number of his followers up to 166, with a 15 per cent. holding. By this motion the company applied to strike out the petition on the ground that it did not comply with the requirements of s. 61.

EVERSHED, J., said it was plain that the individuals whose names were set out in the affidavit of the 25th October, 1946, had not communicated any authority to the petitioner at the time when he presented his petition. He would assume that each of these persons had signed a document purporting to confer authority on the petitioner before he presented his petition. The question was whether on these facts L had been appointed in writing for the purpose of presenting the petition by all the various persons indicated before the expiration of seven days since the passing of the resolution. It was pointed out that on an application to strike out a petition, the court must be satisfied beyond any reasonable doubt that the petition could not succeed. It seemed to him, where the sole question was one of construction of s. 61 (2), it would be wrong, having reached a conclusion, to postpone his decision. It was claimed that because these persons had put their names to written authorities, that clothed L with the authority to present the petition. His view of the section was that to clothe the petitioner with the necessary authority, not only must that authority be in writing, as required by s. 61, but the fact of it having been given must have been communicated to the person making the application before it was made. That result followed from the reasoning of Bennett, J., and of the Court of Appeal in *In re Suburban and Provincial Stores, Ltd.* [1943] Ch. 156. He would accede to the company's motion to strike out the petition.

COUNSEL: *Pascoe Hayward*, K.C., and *J. B. Richardson*; *Gravenor Hewins*.

SOLICITORS: *Slaughter & May*; *Ingledew, Brown, Bennison and Garrett*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

R. *v.* Chancellor of St. Edmundsbury and Ipswich Diocese —*ex parte* White

Lord Goddard, C.J., Lewis and Oliver, JJ.

7th November, 1946

Constitutional law—Certiorari—Proceedings in Consistory Court.

Application for an order of *certiorari*.

The respondent, the chancellor of the diocese of St. Edmundsbury and Ipswich, granted to the respondent, a Mrs. Paddy, a faculty in connection with the grave of her child. The applicant, the vicar of the parish, who objected, applied for an order of *certiorari* to have the order authorising the faculty brought up before the court and quashed. The respondents raised the preliminary objection that a writ of *certiorari* would not lie from the Divisional Court to a consistory court.

LORD GODDARD, C.J., said that it would be sufficient for the court to say that it found that, from the earliest days, no writ of *certiorari* had ever issued from it to an ecclesiastical court, and that it was far too late now to ask the court to create a precedent by ordering such a writ to issue. It was undoubtedly true that writs of prohibition had lain to the ecclesiastical courts since the twelfth century, but there was no trace of *certiorari* in that connection. Lord Ellenborough had said that *communis opinio* was evidence of what the law was; and it was abundantly clear that the *communis opinio* among lawyers was that *certiorari* did not lie, for in none of the many cases before the court in which excess of jurisdiction on the part of a spiritual court had been alleged had it been attempted to get more than a writ of prohibition. A writ of prohibition prohibited a court from entertaining an action, or proceeding on a judgment or other matter. *Certiorari* was a writ by which the record of the court to which it was directed was brought up to be examined in the Divisional Court. It might be an attractive argument that, if prohibition lay, *certiorari* must lie because the result of the two things was the same, and that the court would only issue either writ if satisfied that there had been an excess of jurisdiction; so that if the court could issue a writ prohibiting the spiritual court from proceeding with a matter as being in excess of jurisdiction, it must necessarily follow that it could issue a writ of *certiorari* to see whether there had been an exceeding of jurisdiction. While it might be enough for the court to decline in the twentieth century to create a precedent in such a matter, it would be more satisfactory to ascertain, if possible, the principle whereby prohibition lay but *certiorari* did not. *Certiorari* lay only to an inferior court. The question, accordingly, was whether a spiritual court was inferior to a court of King's Bench. Again, it was, no doubt, an attractive argument that, since prohibition lay to it, the spiritual court must be an inferior one. There were dicta to be found which certainly seemed to say that the spiritual courts were not inferior in the sense that the Divisional Court could treat them as such for the purpose of examining their records. The reason for the distinction was to be found in the fact that there had always, in England, been more than one system of law. The canon law and the civil law as administered by civilians in the church courts were at least as old as the common law, and were a very vigorous body of law. Referring to the existence also of the courts of equity and of Admiralty, his lordship said that at a very early stage the King had taken to himself the power or the duty to decide on the boundary between the common law and the ecclesiastical courts, hence the use of the writ of prohibition. As the common-law courts were those from which the prerogative writs issued, it was not unnatural that the court of King's Bench should assume the right of issuing prohibition to the ecclesiastical court if it entertained a matter outside its jurisdiction as being of temporal import only; but it never claimed, once a case was before a spiritual court, to have the record of that court brought up before the court of King's Bench; though there was power to issue prohibition even if the case had been heard, where the defect of jurisdiction appeared on the face

of the pleadings. Because, therefore, prohibition lay, it did not follow that *certiorari* lay or that the spiritual courts were inferior to the courts of common law. In any event, the court was not now prepared to set up the suggested precedent after some 600 years. The preliminary objection succeeded.

LEWIS and OLIVER JJ., concurred.

COUNSEL: *Sutton*, K.C., and *Stranders; Gray*, K.C., and *Humphrey King*.

SOLICITORS: *Tamplin, Joseph & Flux*, for *Gudgeons, Peecock and Prentice*, Stowmarket; *Evill & Coleman*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

Leng *v.* Leng

Lord Merriman, P., and Byrne, J. 18th October, 1946

Husband and wife—Desertion—Wife ill-treated by husband in neurotic condition—Order in her favour for desertion—Validity.

Appeal from a decision of Hull justices.

The respondent wife left the matrimonial home on the ground of the personal unkindness, nagging and orders to her to "clear out" of her husband, the appellant, who was in poor health and in a neurotic condition. On a summons taken out by her, a stipendiary magistrate held that she was justified in leaving home, but, in making a separation order, he expressed the hope that the husband would effect a reconciliation. The husband thereupon wrote the wife a sincere letter of repentance and made other attempts to induce her to return to him. She refused to do so. On a summons by the husband for discharge of the maintenance order, the justices held that the husband's neurotic condition would prevent happy married life and would be injurious to her and to their child's health, and made an order in her favour. The husband now appealed.

LORD MERRIMAN, P., said that the case was of importance, though he thought the principles to be applied clear and well established. The stipendiary magistrate had found that the husband's conduct had justified the wife in leaving the home, but he had been careful, in making a separation order, to make no finding constraining the husband to appeal. Consequently, the husband had not appealed against that order. The starting point of the whole case, therefore, was a separation of a kind which the stipendiary had not regarded as breaking up the marriage. Given repentance by the husband, he had seen no reason why the marriage should not be reconstituted. The justices, in the present proceedings, held that the husband's letter of repentance was sincere, but gave the wife a separation order on the ground that she was justified in refusing the husband's offer for the resumption of cohabitation by her past experience of his conduct. It was important that the implications of that decision should be plainly understood: if the wife were, by reason of her experience, justified in refusing now to return, and if the Divisional Court were to uphold the justices' order for the reasons given by them for it, he (his lordship) could not see what circumstances there could be in the course of the next three years or so to impel any court to come to any different conclusion. A Divisional Court having held that the justices' order was valid, the wife, as soon as the requisite three years were up, would be entitled to claim, citing the judgment of the Divisional Court, that she was entitled to a decree of divorce. In plain English, that would mean nothing less than that, by a judgment of a court of justice, neurosis was made a ground for divorce. It had only to be remembered with what restrictions divorce for insanity was hedged about for it to be clear that no court had the right to make such a holding. Justices must apply their minds to the law as laid down by statute and in the judicial decisions, and not invent reasons of that kind for disrupting married life. They must always bear in mind that the marriage vow was expressed to prevail "in sickness and in health." The appeal must be allowed.

BYRNE, J., gave judgment agreeing.

COUNSEL: *Eric Greenwood; R. Withers Payne*.

SOLICITORS: *Amery-Parkes & Co.*, for *A. V. Dickinson*, Hull; *Smith & Hudson*, for *Payne & Payne*, Hull.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

AIR NAVIGATION BILL [H.L.].

To provide for giving effect to the Convention on International Civil Aviation signed at Chicago on the 7th day of December, 1944, and to make further provision for the regulation of air navigation; to provide for the giving of effect to certain provisions of an Interim Agreement on international civil aviation so signed; and for purposes connected with the matters aforesaid. [10th December.

ARBROATH GAS PROVISIONAL ORDER BILL [H.C.]. [11th December.

Read Second Time:—

ROYAL MARINES BILL [H.C.]. [10th December.

ST. ANDREWS LINKS ORDER CONFIRMATION BILL [H.C.]. [11th December.

Read Third Time:—

EXPIRING LAWS CONTINUANCE BILL [H.C.]. [12th December.

MINISTRY OF DEFENCE BILL [H.C.]. [12th December.

In Committee:—

FORESTRY BILL [H.L.]. [12th December.

UNEMPLOYMENT AND FAMILY ALLOWANCES (NORTHERN IRELAND AGREEMENT) BILL [H.C.]. [12th December.

HOUSE OF COMMONS

Read First Time:—

HOUSE OF COMMONS (REDISTRIBUTION OF SEATS) BILL [H.C.].

To relax the rules set out in the Third Schedule to the House of Commons (Redistribution of Seats) Act, 1944, so far as they relate to the application of the electoral quota and, in consequence thereof, to postpone the enumeration date for the purposes of the initial report under section three of that Act. [10th December.

MALTA (RECONSTRUCTION) BILL [H.C.].

To assist the Government of Malta to meet their liabilities for war damage and other expenses, and for purposes connected therewith. [11th December.

Read Second Time:—

GREENWICH HOSPITAL BILL [H.L.]. [11th December.

NATIONAL HEALTH SERVICE (SCOTLAND) BILL [H.C.]. [10th December.

TRUSTEE SAVINGS BANKS BILL [H.L.]. [11th December.

In Committee:—

EXCHANGE CONTROL BILL [H.C.]. [9th December.

QUESTIONS TO MINISTERS

APPEAL TRIBUNALS

Wing-Commander HULBERT asked the Minister of Transport if he will now make a statement about further appointments to complete the constitution of the appeal tribunals which he is required to set up under the provisions of s. 15 of the Road and Rail Traffic Act, 1933, or when he anticipates being able to do so.

Mr. BARNES: I am re-appointing Mr. E. S. Shrapnell-Smith, C.B.E., to be a member of the Road and Rail Appeal Tribunal. I regret I am not yet in a position to announce the name of the second member, but hope to be able to do so before the recess. The Chairman is Mr. Gleeson E. Robinson, lately Commissioner for the Metropolitan Area. [9th December.

WAR DAMAGE VALUE PAYMENTS

Mrs. MIDDLETON asked the Chancellor of the Exchequer when he proposes to make payment of value payments under the War Damage Act; and whether he is prepared to increase their amount, in view of the change of values since 1939.

Mr. DALTON: I propose that value payments under the War Damage Act should be made in the course of next year. I have so informed the War Damage Commission, and have requested it to consider urgently, under s. 11 of the Act, whether there should be an increase in these payments.

Mrs. MIDDLETON: While thanking my right hon. friend for his reply, which will be received with great relief in all areas which have suffered war damage, and not least in the City of Plymouth, may I ask whether those to whom value payments have been made in whole or in part will benefit under any escalator provision which he may suggest? Further, can he say whether members of local authorities, Members of Parliament and aggrieved persons will be able to state a case to the Commission before a decision is reached on this question?

Mr. DALTON: The War Damage Commission is a statutory body and determine their own procedure in this matter. I have asked them to go into the matter urgently, and give me a report. It is for the Commission to decide in what form, if at all, it will receive evidence, whether it be from Members of Parliament or any other people. As regards the first part of my hon. friend's supplementary question, I am expecting that the Commission will make a report in due course.

EARL WINTERTON: Will the right hon. gentleman make it clear that the interest due on these payments will also be paid at the same time?

Mr. DALTON: Yes, sir, the interest is due to be paid, at 2½ per cent., which is the current rate, from the date of the damage taking place until the date of the payment being made.

Mr. MEDLAND: In fixing value payments, will regard be had to the amount of mortgage interest which has had to be paid by those who have lost their property, and to the rent which they have had to pay for new properties?

Mr. DALTON: That is one of the many matters which might be considered by the War Damage Commission. I should think that to take into account the actual rent paid in each case would make the scheme administratively impossible, but that on the broad scheme the incurring of liability for rent would be a matter which the Commission might, if it so desired, take into account.

Mr. CROWDER: Is the 2½ per cent. interest subject to income tax?

Mr. DALTON: Yes, sir, if the recipient has an income which is enough to pay tax upon.

Mr. MICHAEL FOOT: Can my right hon. friend say whether, among the factors which the Commission will be able to take into account, will be the fact that some owners of blitzed property have received a 60 per cent. increase on 1939 values under the Town and Country Planning Act? Will the Commission be able to make a comparable increase? Should not the Treasury, in this matter, be as generous as local authorities were compelled to be under the Town and Country Planning Act?

Mr. DALTON: I am disinclined—and I think the House will agree—to give a lead to the Commission on any points of detail. It is a statutory body, and has a clearly defined duty under the Act. I have asked the Commission to perform a duty under the Act, and I would not like to suggest that it should, or should not, operate in this or that way. [10th December.

WAR DAMAGE CLAIMS

Mr. DOBBIE asked the President of the Board of Trade the latest date on which application will be received for war damage claims.

Sir S. CRIPPS: I announced in this House on 21st October that no claim under Part II of the War Damage Act will be considered after 31st December of this year, unless the claimant can show that he has been prevented by circumstances not under his control from lodging his claim. [12th December.

RULES AND ORDERS

S.R. & O., 1946, No. 2098/L.27

SUPREME COURT, ENGLAND

PROCEDURE: MATRIMONIAL CAUSES

THE MATRIMONIAL CAUSES (AMENDMENT) (NO. 3) RULES, 1946

DATED DECEMBER 11, 1946

I, William Allen, Baron Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by Section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925† :—

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment) (No. 3) Rules, 1946.

(2) These Rules shall come into operation on the sixteenth day of December, nineteen hundred and forty-six.

(3) The Matrimonial Causes Rules, 1944,‡ as amended by any subsequent Rules, (hereinafter referred to as "the principal Rules"), shall have effect as further amended by these Rules.

(4) In these Rules, a Rule referred to by number means the Rule so numbered in the principal Rules.

2. The following amendment shall be made in Rule 1 (3) (which contains the definitions used for the purposes of the principal Rules) namely :—

(1) The following definition shall be substituted for the definition of "Judge"—

"'Judge' means the President and any Judge of the Probate Division, any Judge of the High Court for the time being exercising jurisdiction in matrimonial causes and matters, and any Commissioner for the time being exercising jurisdiction in matrimonial causes and matters under section 70 (5) of the principal Act and any order made thereunder."

(2) The following definitions shall be inserted after the definition of "Defended cause"—

"'Long defended cause' means a defended cause which has been included in the long defended list referred to in Rule 32 by virtue of directions given by a Registrar under Rule 30, and 'Short defended cause' means a cause which has been included in the short defended list referred to in Rule 32 by virtue of such a direction as aforesaid. 'Divorce Town' means a town specified in Appendix III."

3. Rule 30 (which relates to Registrars' Certificates and directions for trial) shall be amended as follows, namely—

(1) In paragraph (2) thereof, the words "Divorce Towns" shall be substituted for the words "Assize Towns."

(2) In paragraph (4) thereof, the following sub-paragraphs shall be substituted for sub-paragraph (*c*)—

"(*c*) The Registrar shall issue with his certificate directions as to the place of trial or hearing, and in giving these directions shall have regard to the circumstances of the case including the convenience of the parties and their witnesses, costs, the date on which the trial or hearing can take place, the estimated length of the trial or hearing of the cause, the relative facilities for trial or hearing in London or at a Divorce Town, and the burden imposed on the jurors.

"(*d*) In the case of a defended cause, fixed for trial or hearing at a Divorce Town the Registrar shall direct whether the cause is to be included in the long defended list or the short defended list referred to in Rule 32, according to the estimated length of the trial or hearing of the cause.

"Any direction given by a Registrar under this sub-paragraph may be subsequently varied, either by him or by a Registrar of the Registry at a Divorce Town at which the cause is to be tried or heard, and the Registrar varying such a direction may make such consequential provision as to place of trial or otherwise as may be requisite."

4. Rule 31 (which relates to the setting down of causes for trial) shall be amended by substituting for paragraphs (3) and (4) thereof the following paragraphs, namely—

"(3) No long defended cause shall be entered for trial or hearing at Assizes less than 28 days before the commission day fixed for the Assize town at which the cause is to be tried or heard, except by order of a Judge to be obtained on motion.

"(4) Save with the consent of all parties or by leave of the Judge, no cause shall be tried or heard until after the expiration of 10 days from the date of setting down."

5. The following Rule shall be substituted for Rule 32 (which prescribes the procedure in connection with the trial of matrimonial causes at Assizes)—

"*Trial in the Provinces.*

"32.—(1) Subject to the provisions of this Rule, matrimonial causes, and any matter arising out of or connected therewith, may be tried and determined at any Divorce Town :

Provided that long defended causes may be fixed for trial or hearing only at those towns which are marked 'A' in Appendix III, and no cause other than a long defended cause may be fixed for trial or hearing at Bury St. Edmunds.

(2) Within seven days of the date on which a cause is set down for trial or hearing at a Divorce Town, the Registrar of the Registry in which the cause is proceeding shall, unless the cause is to be tried or heard at a town at which the Registry is situate, transmit the file of the cause, together with a skeleton form of decree, to the Registry at the town at which the cause is to be tried or heard, and shall furnish to the Senior Registrar an index card relating to the cause.

(3) The Registrar of the District Registry situated at each Divorce Town shall prepare, and keep up to date, three numbered lists, to be known as the 'undefended list,' the 'long defended list' and the 'short defended list,' showing respectively the undefended causes, the long defended causes, and the short defended causes, which are for the time being set down for trial or hearing at that Town.

The causes shall be entered in each list in the order in which they were set down for trial or hearing in the District Registry in which the lists are prepared or, in the case of causes proceeding in another Registry the files of which have been transmitted under paragraph (2) of this Rule, in the order in which the files were received in the first-mentioned Registry, as the case may be. A copy of each list shall be displayed in a conspicuous place in the Registry, and shall be open to inspection by the public at all times during office hours.

(4) Not less than 21 days before commission day at a Divorce Town at which Assizes are held (not being Liverpool or Manchester), the Registrar preparing the list of long defended causes set down for trial or hearing at Assizes at that town shall furnish a copy of the said list to the Senior Registrar and to the Associate of the Circuit on which that Assize Town is.

(5) Not less than 10 days before the date fixed for the trial or hearing of any undefended cause, or any short defended cause, which has been set down for trial or hearing at a Divorce Town, the Registrar of the Registry at that Town shall—

(*a*) cause notice of the date and place so fixed to be made public in such manner as most likely to come to the notice of the parties thereto and other persons likely to be interested; and

(*b*) send notice by post of the date, place, and approximate time of the trial or hearing to the solicitor for the petitioner (or to the petitioner if acting in person) and to any person who has entered an appearance in the case (or to the solicitor of that person), and it shall be the duty of the solicitor for the petitioner, or of the petitioner if acting in person, to provide a sufficient number of stamped and addressed envelopes for the purpose.

(6) An officer of the Divorce Registry or of a District Registry shall attend the Judge upon the trial or hearing of matrimonial causes, and shall draw the decree or order pronounced or made by the Court.

(7) A decree or order made in respect of a cause tried or heard at a Divorce Town shall be signed by the District Registrar of the Registry at that Town.

(8) Where the file of papers in any cause has been transmitted from one Registry to another under paragraph (2) of this Rule, the Registrar of the Registry to which it was transmitted shall, as soon as may be after the cause has been tried or heard, return the file to the Registry in which the cause is proceeding, together with any

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49. ‡ S.R. & O., 1944 (No. 389) I, p. 931

documentary evidence produced during the trial or hearing and not ordered to be handed out, and the decree or order in the cause.

(9) Where a cause is set down for trial or hearing at Bodmin, Winchester, Bury St. Edmunds or Lewes, the references in the foregoing paragraphs of this Rule to the Registry of the Divorce Town at which a cause is to be tried or heard, or to the Registrar of that Registry, shall be construed in relation to that cause as references to the Registries at Plymouth, Southampton, Ipswich and Brighton respectively, and to the Registrars thereof."

6. Rule 58 (which relates to the hearing of summonses) shall be amended by substituting for paragraph (2) thereof, the following paragraph, namely—

"(2) Summonses to be heard by a Judge may, unless otherwise ordered, be heard—

(*a*) in London; or,

(*b*) in the case of a summons in a cause proceeding in a District Registry, at the Divorce Town in which that Registry is situate; or

(*c*) in the case of a summons in a cause set down for trial or hearing at a Divorce Town, at that Town."

7. In Rule 60 (which relates to subpœnas) and in paragraph (3) of Rule 63 (which prescribes the procedure on motions), the words "Divorce Town" shall be substituted for the words "Assize Town" in each place where those words occur.

8. The following Appendix shall be substituted for Appendix III, namely—

"APPENDIX III

DIVORCE TOWNS

Birmingham (A)	Leicester (A)
Bodmin (A)	Lewes (A)
Bradford	Lincoln (A)
Brighton	Liverpool (A)
Bristol (A)	Manchester (A)
Bury St. Edmunds (A)	Newcastle (A)
Caernarvon (A)	Newport (A)
Cambridge	Northampton
Cardiff (A)	Norwich (A)
Carlisle (A)	Nottingham (A)
Carmarthen (A)	Preston
Chester (A)	Plymouth
Derby (A)	Reading
Durham (A)	Sheffield
Exeter (A)	Shrewsbury (A)
Gloucester (A)	Southampton
Hanley	Swansea (A)
Ipswich (A)	Winchester (A)
Leeds (A)	York (A)."

Dated the 11th day of December, 1946. *Jowitt.* C.

We concur, *Goddard,* C.J.
Merriman, P.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 2083. **Children and Young Persons, England.** Boarding Out Rules. December 10.

No. 2050. **County Court Districts** (Miscellaneous) Order. September 30.

No. 2098. **Supreme Court, England.** Matrimonial Causes (Amendment) (No. 3) Rules. December 11.

No. 2044. **Trading with the Enemy,** Germany. Licence. December 3.

PROVISIONAL RULES AND ORDERS, 1946

Poor Law, England. Boarding out of Children. Public Assistance (Boarding Out) Order, 1946.

HOUSE OF COMMONS PAPERS (SESSION 1945–46)

No. 187. **Statutory Rules and Orders, &c.** 1st to 21st Reports and 1st to 3rd Special Reports from the Select Committee on, together with the Proceedings of the Committee and Minutes of Evidence.

COMMAND PAPERS (SESSION 1946–47)

No. 6991. **United States Copyright Laws.** Exchange of Notes between the Government of the United Kingdom and the Government of the United States concerning the United States Copyright Laws. Washington, March 10, 1944. (Treaty Series No. 62, 1946.)

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

The annual banquet of the Worshipful Company of Solicitors has now been fixed for Thursday, 20th March, 1947. In addition to the Lord Mayor (by whose kind permission the banquet will again be held at the Mansion House) and the Sheriffs of the City of London, the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls have expressed the hope that they will be able to attend. At the December Court a further nine applicants were elected to the Freedom and Livery, and one to the Freedom of the Company.

NOTES AND NEWS

Honours and Appointments

The Right Honourable WILLIAM LYON MACKENZIE KING, P.C., M.P., Prime Minister of Canada, has been elected an Honorary Master of the Bench of Gray's Inn.

MR. A. A. PEREIRA has been appointed Stipendiary Magistrate of East and West Ham in succession to MR. W. E. Batt, who has been appointed a Metropolitan Magistrate.

Notes

The Minister of Town and Country Planning, Mr. Lewis Silkin, M.P., has made an order establishing a development corporation to build the new town at Stevenage. This is the first of the development corporations to be set up under the New Towns Act, 1946. The Minister has appointed the following as members of the corporation: Mr. Clough Williams-Ellis, M.C., J.P., A.R.I.B.A. (chairman); Dr. Monica Felton, Ph. D. (vice-chairman); Mr. J. D. Campbell Allen, B.A., Mr. Hinley Atkinson, Councillor Frank Corbett, J.P., Alderman W. J. Grimshaw, J.P., Councillor P. T. Ireton, J.P., Mrs. Elizabeth McAllister, M.A.

DINNER—GRAY'S INN

The Treasurer of Gray's Inn (The Hon. Mr. Justice Wallington) and the Masters of the Bench entertained the following guests at dinner in the temporary hall of the Society, on 11th December: The Right Hon. the Lord Chief Justice of England, His Eminence the Cardinal Archbishop of Westminster, The Right Hon. Lord Porter, The Right Hon. H. U. Willink, M.C., K.C., The Hon. Mr. Justice Hodson, M.C., The Hon. Mr. Justice Birkett, The Hon. Mr. Justice Vaisey, The Hon. Mr. Justice Roxburgh, The Hon. Mr. Justice Wynn-Parry, Sir Alexander Maxwell, G.C.B., K.B.E., Sir Thomas Barnes, K.C.B., C.B.E., Sir Roydon Dash, D.F.C., Major John Churchill, D.S.O., Mr. Arthur Bryant, M.A., F.R.Hist.S., Mr. Guy Radford. The Benchers present in addition to the Treasurer were: The Right Hon. Winston S. Churchill, O.M., C.H., F.R.S., M.P., The Right Hon. Lord Thankerton, The Right Hon. Viscount Greenwood, K.C., LL.D., Mr. Bernard Campion, K.C., The Right Hon. Lord Uthwatt, The Hon. Mr. Justice Hilbery, Mr. Noel Middleton, K.C., Sir Harold Derbyshire, M.C., K.C., Sir Albion Richardson, C.B.E., K.C., Mr. R. Warden Lee, D.C.L., F.B.A., The Very Rev. W. R. Matthews, K.C.V.O., D.D., Sir Arnold McNair, C.B.E., K.C., LL.D., F.B.A., Sir William McNair, K.C., The Right Hon. Sir Andrew Duncan, G.B.E., LL.D., M.P., Sir Bertrand Watson, Mr. S. E. Pocock, O.B.E., Sir John Forster, K.C., Mr. H. E. Salt, K.C., Mr. Wilfrid Barton, K.C., Mr. H. B. Durley Grazebrook, K.C., Mr. Michael Rowe, C.B.E., K.C., and the Under-Treasurer (Mr. O. Terry).

SOLICITORS' BENEVOLENT ASSOCIATION.

Mr. A. F. King-Stephens (Lawrence, Graham and Co., London) has been elected chairman for the year 1946–47, and Mr. G. E. Longrigg, T.D., M.A. (Longrigg & Co., Bath), vice-chairman. Over £10,000 has been distributed during the last three months to 120 beneficiaries. An appropriate gift at this time of the year would be a donation to the Cecil Allen Coward Fund from which the Association provides education and training for the sons and daughters of necessitous or deceased members. Amongst those needing immediate assistance are a medical student (who has won an open scholarship), an apprentice in engineering and a student training as a teacher of art. Donations for the benefit of these students would be gratefully received by the chairman Mr. A. F. King-Stephens, at 12, Clifford's Inn, E.C.4.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1946

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., Dec. 23	Mr. Blaker	Mr. Hay	Mr. Farr

	Group A.		Group B.	
	Mr. Justice Roxburgh	Mr. Justice Wynn-Parry	Mr. Justice Evershed	Mr. Justice Romer
Date.	*Witness.*	*Non-Witness.*	*Non-Witness.*	*Witness.*
Mon., Dec. 23	Mr. Jones	Mr. Reader	Mr. Andrews	Mr. Blaker

The CHRISTMAS VACATION will commence on Tuesday, 24th December, 1946, and terminate on Monday, 6th January, 1947.